

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**EVERICK MONK**

**Plaintiff**

**V.**

**TURN KEY MEDICAL, ET AL.**

## Defendants

**Case No. 5:21-cv-146**

## ORDER OF DISMISSAL

Plaintiff Everick Monk, proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged deprivations of his constitutional rights. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff complained of the medical care provided to him during his confinement in the Bowie County Correctional Center. Defendants Bennett, Magee, Neal, and Ponder filed a motion for summary judgment asserting that Plaintiff failed to exhaust his administrative remedies. Docket No. 37.<sup>1</sup> Defendants Hillhouse, Ebey, McFaul, Owenby, and Phipps filed a motion to dismiss for failure to state a claim upon which relief may be granted. Docket No. 54. Plaintiff filed responses to the motion for summary judgment but not to the motion to dismiss. Docket No. 48.

After review of the pleadings and summary judgment evidence, the Magistrate Judge issued a Report recommending that the motions to dismiss and for summary judgment be granted and the lawsuit dismissed. Docket No. 62. The Magistrate Judge observed that while the Defendants Warden Wilson, Jail Administrator Austin, Sgt. Henderson, Lt. Jackson, and Officer

<sup>1</sup> The caption and Defendants' motions to dismiss spell certain Defendants' names differently. The Court uses the spelling of Defendants' last names as disclosed in their motion to dismiss. *See* Docket Nos. 37, 54.

O'Dell did not join in the motion for summary judgment, the evidence showed that Plaintiff had not exhausted his administrative remedies, and so that defense inured to the benefit of the non-moving parties as well. *Id.* at 11 (citing *Lewis v. Lynn*, 236 F.3d 766, 768 (5th Cir. 2001)). The Magistrate Judge also concluded that Plaintiff had failed to state a claim against Turn Key Medical or against the unknown members of the Wadley Hospital staff. *Id.* at 19.<sup>2</sup>

A copy of the Magistrate Judge's Report was sent to Plaintiff at his last known address, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420–21 and n.9 (5th Cir. 2019).

Because no objections have been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017); *Arriaga v. Laxminarayan*, Case No. 4:21-CV-00203- RAS, 2021 WL 3287683, at \*1 (E.D. Tex. July 31, 2021).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (where

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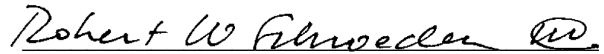
<sup>2</sup> With respect to any claims against John and Jane Does, the Court notes that “the mere naming of a person through use of a fictitious name does not make that person a party absent voluntary appearance or proper service of process.” *Glottfelty v. Karas*, 512 Fed. Appx. 408, 417 n.3 (5th Cir. 2013) (citing *Nagle v. Lee*, 807 F.2d 435, 440 (5th Cir. 1987)). The Court finds it is also appropriate to dismiss any claims against John and Jane Does without prejudice due to Plaintiff's failure to properly serve these fictitiously named defendants.

no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge (Docket No. 62) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies as to the Defendants Lt. Bennett, Lt. McGhee, Sheriff Neal, Officer Ponder, Warden Wilson, Jail Administrator Austin, Sgt. Henderson, Lt. Jackson, and Officer O'Dell, and for failure to state a claim upon which relief may be granted against the Defendants Nurse Practitioner Hillhouse, Nurses Ebey, McFaul, Owenby, and Phipps, Turn Key Medical, and the unknown members of the Wadley Hospital staff.

**So ORDERED and SIGNED this 20th day of March, 2024.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE